

SEP 06 2018



August 30, 2018

**VIA CERTIFIED MAIL RETURN RECEIPT REQUESTED**

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**RE: NOTICE OF VIOLATIONS AND INTENT TO FILE SUIT UNDER THE FEDERAL  
WATER POLLUTION CONTROL ACT ("CLEAN WATER ACT") (33 U.S.C. §§  
1251 et seq.)**

Dear Mr. Yates,

This firm represents Los Angeles Waterkeeper ("LA Waterkeeper"), a California non-profit corporation, in regard to violations of the Clean Water Act ("CWA" or "the Act") occurring at the Bodycote Thermal Processing facility in Los Angeles County California, an industrial metal heat treatment plant located at 9921 Romandel Ave, Santa Fe Springs, CA 90670 (the "Facility") with Waste Discharger Identification Number (WDID) 4 19I023136. This letter is being sent to you as the responsible owners, officers, and/or operators of the Facility. Unless otherwise noted, shall hereinafter be referred to as "Bodycote," and Dominique Yates and Ankit Patel shall collectively be referred to as the "Owners/Operators."

LA Waterkeeper is a nonprofit 501(c)(3) public benefit corporation, organized under the laws of the State of California, with its main office at 120 Broadway, Santa Monica, CA 90401. LA Waterkeeper is dedicated to the preservation, protection, and defense of the inland and coastal waters of Los Angeles County including Coyote Creek, Alamitos Bay and San Pedro Bay. To further this mission, LA Waterkeeper actively seeks federal and state implementation of the Clean Water Act. Where



necessary, LA Waterkeeper directly initiates enforcement actions on behalf of itself and its members.

Members of LA Waterkeeper reside in Los Angeles County, and use and enjoy Coyote Creek, Alamitos Bay and San Pedro Bay ("Receiving Waters"). As explained in detail below, Bodycote continuously discharges pollutants into the Receiving Waters, in violation of the Clean Water Act and the Storm Water Permit. LA Waterkeeper members use the Receiving Waters to swim, boat, kayak, bird watch, view wildlife, hike, bike, walk, and run. Additionally, LA Waterkeeper members use the Receiving Waters to engage in scientific study through pollution and habitat monitoring and restoration activities. The unlawful discharge of pollutants from the Facility into the Receiving Waters impairs LA Waterkeeper members' use and enjoyment of these waters. Thus, the interests of LA Waterkeeper's members have been, are being, and will continue to be adversely affected by Bodycote's failure to comply with the Clean Water Act and the Storm Water Permit.

Bodycote is in ongoing violation of the substantive and procedural requirements of the CWA, 33 U.S.C. § 1251 *et seq.*; and California's General Industrial Storm Water Permit, National Pollution Discharge Elimination System ("NPDES") General Permit No. CAS000001 ("General Permit"), Water Quality Order No. 97-03-DWQ ("1997 General Permit"), as superseded by Order No. 2015-0057-DWQ ("2015 General Permit").

The 1997 General Permit was in effect between 1997 and June 30, 2015, and the 2015 General Permit went into effect on July 1, 2015. As will be explained below, the 2015 General Permit includes many of the same fundamental requirements, and implements many of the same statutory requirements, as the 1997 General Permit. Violations of the General Permit constitute ongoing violations for purposes of CWA enforcement. 2015 General Permit, Finding A.6.

Pursuant to Section 309(d) of the Act (33 U.S.C. § 1319(d)) and the Adjustment of Civil Monetary Penalties for Inflation (40 C.F.R. § 19.4), each separate violation of the CWA occurring before November 2, 2015 commencing five years prior to the date of this Notice of Violation and Intent to File Suit subjects Bodycote to a penalty of up to \$37,500 per day; violations occurring after November 2, 2015 and assessed on or after August 1, 2016 subjects Bodycote to a penalty of up to \$52,414 per day. In addition to civil penalties, LA Waterkeeper will seek injunctive relief preventing further violations of the Act pursuant to Sections 505(a) and (d) of the Act (33 U.S.C. §§ 1365(a), (d)) and such other relief as permitted by law. Lastly, Section 505(d) of the Act (33 U.S.C. § 1365(d)) permits prevailing parties to recover costs and fees, including attorneys' fees.

The CWA requires that sixty (60) days prior to the initiation of a citizen-enforcement action under Section 505(a) of the Act (33 U.S.C. § 1365(a)), a citizen enforcer must give notice of its intent to file suit. Notice must be given to the alleged violator, the U.S. Environmental Protection Agency, and the Chief Administrative Officer



of the water pollution control agency for the State in which the violations occur. See 40 C.F.R. 135.2.

As required by the Act, this letter provides statutory notice of the violations that have occurred, and continue to occur, at the Facility. 40 C.F.R. § 135.3(a). At the expiration of sixty (60) days from the date of this letter, LA Waterkeeper intends to file suit under Section 505(a) of the Act (33 U.S.C. § 1365(a)) in federal court against Bodycote for violations of the Act and the General Permit.

## **I. Background**

### **A. The Clean Water Act**

Congress enacted the CWA in 1972 in order to “restore and maintain the chemical, physical, and biological integrity of the Nation’s waters.” 33 U.S.C. § 1251. The Act prohibits the discharge of pollutants into United States waters except as authorized by the statute. 33 U.S.C. § 1311; *San Francisco Baykeeper, Inc. v. Tosco Corp.*, 309 F.3d 1153, 1156 (9th Cir. 2002). The Act is administered largely through the NPDES permit program. 33 U.S.C. § 1342. In 1987, the Act was amended to establish a framework for regulating storm water discharges through the NPDES system. Water Quality Act of 1987, Pub. L. 100-4, § 405, 101 Stat. 7, 69 (1987) (codified at 33 U.S.C. § 1342(p)); *see also Env’tl. Def. Ctr., Inc. v. EPA*, 344 F.3d 832, 840-41 (9th Cir. 2003) (describing the problem of storm water runoff and summarizing the Clean Water Act’s permitting scheme). The discharge of pollutants without an NPDES permit, or in violation of a NPDES permit, is illegal. *Ecological Rights Found. v. Pac. Lumber Co.*, 230 F.3d 1141, 1145 (9th Cir. 2000).

Much of the responsibility for administering the NPDES permitting system has been delegated to the states. *See* 33 U.S.C. § 1342(b); *see also* Cal. Water Code § 13370 (expressing California’s intent to implement its own NPDES permit program). The CWA authorizes states with approved NPDES permit programs to regulate industrial storm water discharges through individual permits issued to dischargers, as well as through the issuance of a single, statewide general permit applicable to all industrial storm water dischargers. 33 U.S.C. § 1342(b). Pursuant to Section 402 of the Act, the Administrator of EPA has authorized California’s State Board Water Resource Control Board (“State Board”) to issue individual and general NPDES permits in California. 33 U.S.C. § 1342. The State Board coordinates with the Central Valley Regional Water Quality Control Board (“Regional Board”), which has shared jurisdiction over the Facility for state and federal water pollution control efforts.

### **B. California’s General Permit for Storm Water Discharges Associated with Industrial Activities**



Between 1997 and June 30, 2015, the General Permit in effect was Order No. 97-03-DWQ, which LA Waterkeeper refers to as the "1997 General Permit." On July 1, 2015, pursuant to Order No. 2015-0057-DWQ, the General Permit was reissued, including many of the same fundamental terms as the prior permit. For the purposes of this notice letter, LA Waterkeeper refers to the reissued permit as the "2015 General Permit." The 2015 General Permit rescinded in whole the 1997 General Permit, except for the expired permit's requirement that annual reports be submitted by July 1, 2015, and for the purposes of CWA enforcement. 2015 General Permit, Finding A.6.

Facilities discharging, or having the potential to discharge, storm water associated with industrial activities that have not obtained an individual NPDES permit must apply for coverage under the General Permit by filing a Notice of Intent to Comply ("NOI"). 1997 General Permit, Provision E.1; 2015 General Permit, Standard Condition XXI.A. Facilities must file their NOIs before the initiation of industrial operations. *Id.*

Facilities must strictly comply with all of the terms and conditions of the General Permit. A violation of the General Permit is a violation of the CWA. The General Permit contains three primary and interrelated categories of requirements: (1) discharge prohibitions, receiving water limitations and effluent limitations; (2) Storm Water Pollution Prevention Plan ("SWPPP") requirements; and (3) self-monitoring and reporting requirements. Beginning under the 2015 General Permit Facilities must submit Exceedance Response Action Plans ("ERA Report") to the State Board outlining effective plans to reduce pollutants if a Facility reports a pollutant above the Numeric Action Level ("NAL"). An annual NAL exceedance occurs when the average of all the analytical results for a parameter from samples taken within a reporting year exceeds the annual NAL value for that parameter. An instantaneous maximum NAL exceedance occurs when two (2) or more analytical results from samples taken for any single parameter within a reporting year exceed the instantaneous maximum NAL value or are outside of the instantaneous maximum NAL range for pH. 2015 General Permit XII.A.

### **C. Bodycote's Industrial Facility**

The Bodycote Facility is located at 9921 Romandel Ave., Santa Fe Springs, CA 90670 and consists of approximately 1.8 acres. The Facility's primary purpose consists of industrial metal heat treatment, metal joining, hot isostatic pressing and metal coatings services. Industrial activities onsite include heat treating, furnace operations, welding, grinding, brazing, annealing, metal pressing and cooling, industrial gas use and storage, industrial vehicle traffic, loading, unloading, handling and storage of associated industrial materials (i.e. metals, gas, lubricants, and hazardous materials), wood pallet stockpiling, dust generating industrial operations, vehicle maintenance, scrap metal storage, and shipping of finished product. Metal pressing and metal cooling occurs outdoors, along with shipping, receiving and industrial vehicle traffic. Trash bins, wood pallets, and empty metal containers are all stored outdoors. LA Waterkeeper does not



currently have information regarding Facility operating hours and will seek that information through discovery.

The Facility's Notice of Intent to Comply with the General Permit ("NOI") and the Facility's current Storm Water Pollution Prevention Plan ("SWPPP"), both obtained from the State Board's Storm Water Multiple Application and Report Tracking System ("SMARTS") establish that Bodycote operates under Standard Industrial Classification ("SIC") Code 3398 – Metal Heat Treating.

Under SIC Code 3398 the General Permit requires Bodycote to analyze storm water samples for Total Suspended Solids ("TSS"), pH, and Oil and Grease ("O&G"). Facilities must also sample and analyze for additional parameters identified on a facility specific basis to reflect pollutant a source assessment, due to receiving water impairments, or as required by the Regional Board. 1997 General Permit, Section B.5.c.i; 2015 General Permit, Section XI.B.6. Here, the Facility has also been sampling and analyzing for Aluminum, Zinc, Lead, Copper, and Iron.

Industrial metal heat treatment and other industrial activities performed at the Facility require the use of a variety of raw materials and hazardous materials. For example, 25,000 gallons of Carbon Dioxide and petroleum gas are stored in a bulk storage tank and used daily at the Facility. Oils and waste oil, other lubricants, and hazardous waste absorbent are used daily throughout the Facility and stored in an area at the center of the industrial site. Diethylene glycol is stored in the quench pits located indoors at the Facility. Oxygen, argon, Helium and carbon dioxide mixes, and acetylene are stored in the thermal coupling area. Finished metal products, up to 200,000 pounds, are stored on racks outdoor near to parts in the cooling stage, non-conforming parts, and heat treat baskets, all along the western borders of the Facility. Metal presses are in use outdoors near to the cooling box that uses carbon dioxide and the cooling tower. The loading and unloading area is expansive and runs along the southern border of the Facility. Pallets, empty containers and trash bins are also stored and located along the south side of the Facility. Over 2000 pounds of scrap metal is also stored outside, adjacent to the south side of the manufacturing building.

Most industrial activities and process occur inside the manufacturing building, with track-out, grinding, welding, and exhaust fan and furnace operation as likely sources of pollution emanating from inside the building. Other potential pollutant sources on site at the Facility include but are not limited to, sediment buildup in the storm water drainage systems and filtration systems, dust from daily operations and vehicle traffic throughout the site, and fine particles from daily operations collecting on roofs and other surfaces and deposited on and off the grounds of the Facility through aerial deposition.

Storm water runoff from the Facility discharges primarily through three discharge points two of which feature a catch basin filtration system. Discharge Point 1 storm is in

the northern corner of the Facility and does not feature a catch basin filter system. Discharge Point 2 is the northwest corner of the Facility and accepts storm water runoff from a portion of the outdoor parts storage and metal cooling area where heat treat baskets are also located. Discharge Point 3 is in the southeastern corner of the Facility at the Facility entrance driveway and accepts storm water runoff from the outdoor parts storage and metal cooling area where heat treat baskets are also located, the loading and unloading area, the bulk storage area, and the scrap metal storage area. Discharge Points 2 and 3 feature the catch basins which are alleged to filter the storm water prior to any sampling, and all storm water discharge from those locations. Very little information is available in the Facility SWPPP as regards to the receiving waters or the municipal storm drain system. But municipal storm water drains are visible along Romandel Ave. at the front of the Facility at Discharge Point 3. While Discharge Points 1 and 2 appear to flow to Santa Fe Springs Road at the northern, back side of the Facility, where municipal storm drains are also evident. The Facility NOI lists the receiving water as "Los Angeles," while the Facility SWPPP and Site Map describe Worsham Creek as the closet receiving water body. There do not appear to be storm water drainage inlets onsite at the Facility other than those in place for the catch basins at Discharge Point 2 and 3.

Storm water falling on the Facility roof is believed to be discharged through gutters and downspouts onto paved surfaces at the Facility and join storm water flow patterns to the discharge points. Large quantities of exposed metals and scrap materials are visible from recent satellite imagery.

## **II. Bodycote's Violations of the Act and the General Permit**

Based on its review of available public documents, LA Waterkeeper is informed and believes that Bodycote is in ongoing violation of both the substantive and procedural requirements of the CWA, and the General Permit. These violations are ongoing and continuous. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the CWA, Bodycote is subject to penalties for violations of the Act since August 30, 2013. LA Waterkeeper expects to identify additional storm water pollutant discharges in violation of the CWA through further investigation of the Facility.

### **A. Bodycote Discharges Storm Water Containing Pollutants in Violation of the General Permit's Discharge Prohibitions, Receiving Water Limitations, and Effluent Limitations**

Bodycote's storm water sampling results provide conclusive evidence of its failure to comply with the General Permit's discharge prohibitions, receiving water limitations and effluent limitations. Self-monitoring reports under the General Permit are deemed "conclusive evidence of an exceedance of a permit limitation." *Sierra Club v. Union Oil*, 813 F.2d 1480, 1493 (9th Cir. 1988).

## **1. Applicable Water Quality Standards**

The General Permit requires that storm water discharges and authorized non-storm water discharges shall not cause or threaten to cause pollution, contamination, or nuisance. 1997 General Permit, Discharge Prohibition A.2; 2015 General Permit, Discharge Prohibition III.C. The General Permit also prohibits discharges that violate any discharge prohibition contained in the applicable Regional Board's Basin Plan or statewide water quality control plans and policies. 1997 General Permit, Receiving Water Limitation C.2; 2015 General Permit, Discharge Prohibition III.D. Furthermore, storm water discharges and authorized non-storm water discharges shall not adversely impact human health or the environment, and shall not cause or contribute to a violation of any water quality standards in any affected receiving water. 1997 General Permit, Receiving Water Limitations C.1, C.2; 2015 General Permit, Receiving Water Limitations VI.A, VI.B.

Dischargers are also required to prepare and submit documentation to the Regional Board upon determination that storm water discharges are in violation of the General Permit's Receiving Water Limitations. 1997 General Permit, p. VII; 2015 General Permit, Special Condition XX.B. The documentation must describe changes the discharger will make to its current storm water best management practices ("BMPs") in order to prevent or reduce any pollutant in its storm water discharges that is causing or contributing to an exceedance of water quality standards. *Id.*

The *Water Quality Control Plan for the Los Angeles Region* ("Basin Plan") also sets forth water quality standards and prohibitions applicable to Bodycote's storm water discharges. The Basin Plan includes a narrative toxicity standard which states that "(a)ll waters shall be maintained free of toxic substances in concentrations that produce detrimental physiological responses in human, plant, animal, or aquatic life." The Basin Plan's Water Quality Standards for Central Valley require a narrower pH range of 6.5 – 8.5 pH units (Basin Plan).

## **2. Applicable Effluent Limitations**

Dischargers are required to reduce or prevent pollutants in their storm water discharges through implementation of best available technology economically achievable ("BAT") for toxic and nonconventional pollutants and best conventional pollutant control technology ("BCT") for conventional pollutants. 1997 General Permit, Effluent Limitation B.3; 2015 General Permit, Effluent Limitation V.A. Conventional pollutants include Total Suspended Solids, Oil & Grease, pH, Biochemical Oxygen Demand and Fecal Coliform. 40 C.F.R. § 401.16. All other pollutants are either toxic or nonconventional. 40 C.F.R. §§ 401.15-16.



Under the General Permit, benchmark levels established by the EPA (“EPA benchmarks”) serve as guidelines for determining whether a facility discharging industrial storm water has implemented the requisite BAT and BCT. *Santa Monica Baykeeper v. Kramer Metals*, 619 F.Supp.2d 914, 920, 923 (C.D. Cal 2009); 1997 General Permit, Effluent Limitations B.5-6; 2015 General Permit, Exceedance Response Action XII.A.

The following EPA benchmarks have been established for pollutants discharged by Bodycote: Total Suspended Solids – 100 mg/L; Oil & Grease – 15 mg/L; pH – 6-9 s.u., Aluminum – .75 mg/l; Iron – 1 mg/l; Lead – .069 mg/l; Copper – .0123 mg/l; and Zinc – .11 mg/L. Again, the Basin Plan’s Water Quality Standards for the Los Angeles Region requires a narrower pH range of 6.5 – 8.5 pH units (Basin Plan).

### 3. Bodycote’s Storm Water Sample Results

Except as provided in Section XI.C.4 of the 2015 General Permit, samples shall be collected from each drainage area at all discharge locations. The samples must be:  
a. Representative of storm water associated with industrial activities and any commingled authorized non-storm water discharges; or, b. Associated with the discharge of contained storm water.

The following discharges of pollutants from the Facility provide evidence of violations of the discharge prohibitions, receiving water limitations, and effluent limitations of the Permit.

#### a. Discharges of Storm Water Containing Total Suspended Solids (TSS) at Concentrations in Excess of Applicable EPA Benchmark Value

Date	Discharge Point	Parameter	Concentration in Discharge (mg/L)	EPA Benchmark (mg/L)
12/12/2014	Discharge Point 2	TSS	222	100
1/9/2018	Discharge Point 1	TSS	224	100
1/9/2018	Discharge Point 2	TSS	200	100
3/10/2018	Discharge Point 2	TSS	124	100
12/22/2015	Discharge Point 2	TSS	150	100

#### b. Discharges of Storm Water Containing pH Levels outside the allowable Basin Plan Range/Values

Date	Discharge Point	Parameter	Result (s.u.)	Instantaneous NAL (s.u.)	Basin Plan Limits (s.u.)



1/9/2017	Discharge Point 1	pH	6.2	6 – 9	6.5 – 8.5
12/12/2014	Discharge Point 1	pH	8.6	6 – 9	6.5 – 8.5

**c. Discharges of Storm Water Containing Zinc (Zn) at Concentrations in Excess of Applicable EPA Benchmark Value**

Date	Discharge Point	Parameter	Concentration in Discharge (mg/L)	EPA Benchmark (mg/L)
12/12/2014	Discharge Point 2	Zn	0.14	0.11
Date	Discharge Point	Parameter	Concentration in Discharge (mg/L)	EPA Benchmark (mg/L)
1/9/2018	Discharge Point 1	Zn	0.884	0.11
1/9/2018	Discharge Point 2	Zn	0.814	0.11
3/10/2018	Discharge Point 1	Zn	0.263	0.11
3/10/2018	Discharge Point 2	Zn	0.256	0.11
2/18/2016	Discharge Point 1	Zn	0.15	0.11
12/22/2015	Discharge Point 2	Zn	0.89	0.11
12/22/2015	Discharge Point 1	Zn	0.15	0.11

**d. Discharges of Storm Water Containing Oil & Grease (O&G) at Concentrations in Excess of Applicable EPA Benchmark Value**

Date	Discharge Point	Parameter	Concentration in Discharge (mg/L)	EPA Benchmark (mg/L)
1/9/2018	Discharge Point 2	O&G	22.7	15
1/9/2018	Discharge Point 1	O&G	15.3	15
3/10/2018	Discharge Point 1	O&G	32.9	15

**e. Discharges of Storm Water Containing Iron (Fe) at Concentrations in Excess of Applicable EPA Benchmark Value**

Date	Discharge Point	Parameter	Concentration in Discharge (mg/L)	EPA Benchmark (mg/L)
1/9/2018	Discharge Point 1	Fe	11.9	1
1/9/2018	Discharge Point 2	Fe	10.8	1
2/18/2016	Discharge Point 1	Fe	1.4	1
2/18/2016	Discharge Point 2	Fe	3	1
3/10/2018	Discharge Point 2	Fe	3.71	1
3/10/2018	Discharge Point 1	Fe	2.82	1
12/22/2015	Discharge Point 2	Fe	12	1
12/22/2015	Discharge Point 1	Fe	1.3	1



**f. Discharges of Storm Water Containing Aluminum (Al) at Concentrations in Excess of Applicable EPA Benchmark Value**

Date	Discharge Point	Parameter	Concentration in Discharge (mg/L)	EPA Benchmark (mg/L)
3/10/2018	Discharge Point 1	Al	1.37	0.75
Date	Discharge Point	Parameter	Concentration in Discharge (mg/L)	EPA Benchmark (mg/L)
3/10/2018	Discharge Point 2	Al	1.54	0.75
1/9/2018	Discharge Point 2	Al	6.06	0.75
1/9/2018	Discharge Point 1	Al	5.02	0.75
2/18/2016	Discharge Point 1	Al	0.84	0.75
2/18/2016	Discharge Point 2	Al	0.98	0.75
12/22/2015	Discharge Point 1	Al	0.79	0.75
12/22/2015	Discharge Point 2	Al	7.2	0.75

**g. Discharges of Storm Water Containing Copper (Cu) at Concentrations in Excess of Applicable EPA Benchmark Value**

Date	Discharge Point	Parameter	Concentration in Discharge (mg/L)	EPA Benchmark (mg/L)
2/18/2016	Discharge Point 1	Cu	0.045	0.0123
12/22/2015	Discharge Point 2	Cu	0.19	0.0123
12/22/2015	Discharge Point 1	Cu	0.028	0.0123
2/18/2016	Discharge Point 2	Cu	0.07	0.0123
12/22/2016	Discharge Point 1	Cu	0.026	0.0123
1/5/2017	Discharge Point 1	Cu	0.016	0.0123
1/9/2018	Discharge Point 2	Cu	0.254	0.0123
1/9/2018	Discharge Point 1	Cu	0.274	0.0123
3/10/2018	Discharge Point 2	Cu	0.0919	0.0123
3/10/2018	Discharge Point 1	Cu	0.0932	0.0123

**h. Bodycote's Sample Results Are Evidence of Violations of the General Permit**

Bodycote's sample results demonstrate violations of the General Permit's discharge prohibitions, receiving water limitations, and effluent limitations set forth above. LA Waterkeeper is informed and believes that the Bodycote has known that its storm water contains pollutants at levels exceeding General Permit standards since at least August 30, 2013.



LA Waterkeeper alleges that such violations occur each time storm water or non-storm water discharges from the Facility. Attachment A hereto, sets forth the specific rain dates on which LA Waterkeeper alleges that Bodycote has discharged storm water containing impermissible levels of TSS, Zn, Fe, Al, O&G, and pH affecting substances in violation of the General Permit. 1997 General Permit, Discharge Prohibition A.2, Receiving Water Limitations C.1 and C.2; 2015 General Permit, Discharge Prohibitions III.C and III.D, Receiving Water Limitations VI.A, VI.B.

Because Bodycote recorded averages of testing above Numeric Action Levels ("NAL"), which are equivalent to the standard EPA Benchmark Limits, for Iron, Aluminum, Copper and Zinc in the 2015-16 year, the Facility entered ERA Level 1 for those parameters in 2016-2017 reporting year. The Facility did not enter ERA Level 1 for Total Suspended Solids, pH or Oil and Grease in the 2015-2016 reporting year, but will enter ERA Level 1 for TSS and O&G for the 2018-2019 reporting year based on EPA Benchmark exceedances, including a TSS result of 224 mg/L and an O&G result of 32.9 mg/L, both over two times the Benchmark. During the 2016-2017 reporting year the Facility managed to avoid entering ERA Level 2 for any parameter, though only sampled two events in violation of the General Permit. However, in the 2017-2018 reporting year, where again only two sampling events were recorded by Bodycote in violation of the General Permit, storm water sample analyses significantly worsened. In addition to TSS and O&G, the Facility exceeded the NAL averages for Copper, Aluminum, Iron, and Zinc, and will be subject to ERA reporting and Facility upgrades in accordance with the ERA reports and General Permit requirements. The average NAL exceedances for these metals have been at magnitudes over four times for Aluminum, over seven times for Iron, over five times for Copper, and over two times for Zinc.

#### **4. Bodycote Has Failed to Implement BAT and BCT**

Dischargers must implement adequate BMPs that fulfill the BAT/BCT requirements of the CWA and the General Permit to reduce or prevent discharges of pollutants in their storm water discharges. 1997 General Permit, Effluent Limitation B.3; 2015 General Permit, Effluent Limitation V.A. To meet the BAT/BCT standard, dischargers must implement minimum BMPs and any advanced BMPs set forth in the General Permit's SWPPP Requirements provisions where necessary to reduce or prevent pollutants in discharges. See 1997 General Permit, Sections A.8.a-b; 2015 General Permit, Sections X.H.1-2. Sampling results of magnitudes well in excess of benchmark levels, as reported by Bodycote, are evidence that Bodycote does not have BMPs that achieve BAT/BCT (*Santa Monica Baykeeper v. Kramer Metals, Inc.* 619 F. Supp. 2d 914, 925 (C.D. Cal., 2009.); *Protection Alliance v. River City Waste Recyclers, LLC*, 205 F.Supp.3d 1128 (E.D. Cal. 2016).

Bodycote has failed to implement the minimum BMPs required by the General Permit, including: sufficient good housekeeping requirements; preventive maintenance requirements; aerial deposition control; material handling and waste management



requirements; track out and exhaust controls, erosion and sediment controls; employee training and quality assurance; and record keeping. 1997 General Permit, Sections A.8.a(i–x); 2015 General Permit, Sections X.H.1(a–g).

Bodycote has further failed to implement advanced BMPs necessary to reduce or prevent discharges of pollutants in its storm water sufficient to meet the BAT/BCT standards, including: exposure minimization BMPs; containment and discharge reduction BMPs; treatment control BMPs; or other advanced BMPs necessary to comply with the General Permit's effluent limitations. 1997 General Permit, Section A.8.b; 2015 General Permit, Sections X.H.2.

Each day the Owners/Operators have failed to develop and implement BAT and BCT at the Facility in violation of the General Permit is a separate and distinct violation of Section 301(a) of the CWA (33 U.S.C. § 1311(a)). The violations described above were at all times in violation of Section A of the 1997 General Permit, and Section X of the 2015 General Permit. Accordingly, the Owners/Operators have been in violation of the BAT and BCT requirements at the Facility every day since at least August 30, 2013.

#### **5. Bodycote Has Failed to Develop and Implement an Adequate Storm Water Pollution Plan**

The General Permit requires dischargers to develop and implement a site-specific SWPPP. 1997 General Permit, Section A.1; 2015 General Permit, Section X.A. The SWPPP must include, among other elements: (1) the facility name and contact information; (2) a site map; (3) a list of industrial materials; (4) a description of potential pollution sources; (5) an assessment of potential pollutant sources; (6) minimum BMPs; (7) advanced BMPs, if applicable; (8) a monitoring implementation plan; (9) annual comprehensive facility compliance evaluation; and (10) the date that the SWPPP was initially prepared and the date of each SWPPP amendment, if applicable. *See id.*

Dischargers must revise their SWPPP whenever necessary and certify and submit via the State Board's SMARTS system their SWPPP within 30 days whenever the SWPPP contains significant revisions(s); and, certify and submit via SMARTS for any non-significant revisions not more than once every three (3) months in the reporting year. 2015 General Permit, Section X.B; see also 1997 General permit, Section A.

LA Waterkeeper's investigation indicates that Bodycote has been operating with an inadequately developed or implemented SWPPP in violation of General Permit requirements. Bodycote has failed to evaluate the effectiveness of its BMPs and to revise its SWPPP as necessary, resulting in the Facility's numerous effluent limitation violations.

Each day the Owners/Operators failed to develop and implement an adequate SWPPP is a violation of the General Permit. The SWPPP violations described above



were at all times in violation of Section A of the 1997 General Permit, and Section X of the 2015 General Permit. The Owners/Operators have been in violation of these requirements at the Facility every day since at least August 30, 2013.

**6. Bodycote has Failed to Develop, Implement, and/or Revise an Adequate Monitoring and Reporting Program**

Section B(1) and Provision E(3) of the 1997 General Permit required Facility Owners/Operators to develop and implement an adequate Monitoring and Reporting Program. Similarly, Section X.I of the 2015 General Permit requires Facility Owners/Operators to develop and implement a Monitoring Implementation Plan ("MIP"). The primary objective of the monitoring and reporting requirements is to detect and measure the concentrations of pollutants in a facility's discharge to ensure compliance with the General Permit's Discharge Prohibitions, Effluent Limitations, and Receiving Water Limitations. See 1997 General Permit, Section B(2); 2015 IGP Fact Sheet, Section II.J(1). Monitoring undertaken must therefore determine whether pollutants are being discharged, and whether response actions are necessary, and must evaluate the effectiveness of BMPs. See General Permit, Section I.J(56).

Sections B(5) and B(7) of the 1997 General Permit, and Section XI.A of the 2015 General Permit, require dischargers to visually observe and collect samples of storm water from all locations where storm water is discharged. Under XI.B of the 2015 General Permit, the Facility Owners/Operators are required to collect at least two (2) samples from each discharge location at their Facility during the first half of the Wet Season, and then again during the second half of the Wet Season. Storm water samples must be analyzed for TSS, pH, O&G, and other pollutants that are likely to be present in the Facility's discharges in significant quantities, and as required under the General Permit pursuant to a Facility SIC. See 2015 General Permit, Section XI.B(6). Here, the Facility has also been sampling and analyzing for Aluminum, Zinc, Lead, Copper, and Iron as they are known to be pollutants onsite in significant quantity.

The Facility Owners/Operators have been conducting operations at the Facility with an inadequately developed, implemented, and/or revised MIP. Upon information and belief, the Facility Owners/Operators have not collected samples from all discharge points at the Facility where distinct industrial activity occurs. For example, the Facility only sampled two rain events in the 2016-2015 and the 2017-2018 reporting years despite sufficient rain events during the reporting year. (See Attachment A.) In the 2016-2017 reporting year only three rain events were sampled and during each of these sampling events in the 2016-2017 reporting year only one discharge point was sampled.

The Facility Owners'/Operators' failure to conduct sampling and monitoring as required by the General Permit demonstrates that it has failed to develop, implement, and/or revise an MIP that complies with the requirements of Section B and Provision E(3) of the 1997 General Permit and Section XI of the 2015 General Permit. Every day



that the Facility Owners/Operators conduct operations in violation of the specific monitoring requirements of the 1997 General Permit or the 2015 General Permit, or with an inadequately developed and/or implemented MIP, is a separate and distinct violation of the 1997 General Permit or the 2015 General Permit, and the Clean Water Act. The Facility Owners/Operators have been in daily and continuous violation of the General Permit's MIP requirements every day since at least August 30, 2013. These violations are ongoing, and LA Waterkeeper will include additional violations when information becomes available, including specifically continuing violations of the 2015 General Permit monitoring requirements (see 2015 General Permit, Section XI.). The Facility Owners/Operators are subject to civil penalties for all violations of the Clean Water Act occurring since August 30, 2013.

#### **7. Bodycote's Failure to Comply with the General Permit's Reporting Requirements**

Section B(14) of the 1997 General Permit requires a permittee to submit an Annual Report to the Regional Board by July 1 of each year. Section B(14) requires that the Annual Report include a summary of visual observations and sampling results, an evaluation of the visual observation and sampling results, the laboratory reports of sample analysis, the annual comprehensive site compliance evaluation report, an explanation of why a permittee did not implement any activities required, and other information specified in Section B(13). The 2015 General Permit includes the same annual reporting requirement. See 2015 General Permit, Section XVI.

The Facility Owners/Operators have also submitted incomplete Annual Reports. For instance, the Facility operators must report any noncompliance with the General Permit at the time that the Annual Report is submitted, including 1) a description of the noncompliance and its cause, 2) the period of noncompliance, 3) if the noncompliance has not been corrected, the anticipated time it is expected to continue, and 4) steps taken or planned to reduce and prevent recurrence of the noncompliance. 1997 General Permit, Section C(11)(d). The Facility Owners/Operators did not report their non-compliance as required. Further, Bodycote failed to undertake sampling, and report results from every discharge point at the Facility, as required by the General Permit.

Last, the General Permit requires a permittee whose discharges violate the General Permit Receiving Water Limitations to submit a written report identifying what additional BMPs will be implemented to achieve water quality standards, along with an implementation schedule. 1997 General Permit, Receiving Water Limitations C(3) and C(4). Information available to LA Waterkeeper indicates that the Facility Owners/Operators failed to submit sufficient reports as required by Receiving Water Limitations C(3) and C(4) of the 1997 General Permit. As such, the Owners/Operators are in daily violation of this requirement of the General Permit.



Information available to LA Waterkeeper indicates that the Facility Owners/Operators have submitted incomplete and/or incorrect Annual Reports that fail to comply with the General Permit. Further, the ERA Level 1 Report resulting from samples recorded in the 2015-2016 reporting year was insufficient, as evidenced by the most recent storm water sampling results, including only metal filter socks as an additional BMP at the discharge points. Last, data uploaded to SMARTS suggests that the Facility has a long history of late reporting, with required reports submitted to the State Board after notice of the reporting deficiency. The Facility was also issued a Notice of Violation by the Regional Board in 2013 noting an unauthorized non-storm water discharge, an incomplete SWPPP, and poor BMPs. As such, the Owners/Operators are in daily violation of the CWA and General Permit. Every day the Facility Owners/Operators conduct operations at the Facility without reporting as required by the General Permit is a separate and distinct violation of the General Permit and Section 301(a) of the Clean Water Act, 33 U.S.C. §1311(a). The Facility Owners/Operators have been in daily and continuous violation of the General Permit's reporting requirements every day since at least August 30, 2013. These violations are ongoing, and LA Waterkeeper will include additional violations when information becomes available, including specifically violations of the 2015 General Permit reporting requirements (see 2015 General Permit, Section XVI.). The Facility Owners/Operators are subject to civil penalties for all violations of the Clean Water Act occurring since August 30, 2013.

### **III. Persons Responsible for the Violations**

LA Waterkeeper puts Bodycote on notice that it is the entity responsible for the violations described above. If additional persons are subsequently identified as also being responsible for the violations set forth above, LA Waterkeeper puts Bodycote on formal notice that it intends to include those persons in this action.

### **IV. Name and Address of Noticing Party**

The name, mailing address, and telephone number of the noticing party is as follows:

Arthur Pugsley – Senior Attorney  
Los Angeles Waterkeeper  
120 Broadway  
Santa Monica, CA 90401  
(310) 394-6162  
arthur@lawwaterkeeper.org



**V. Counsel**

LA Waterkeeper has retained legal counsel to represent it in this matter. Please direct all communications to:

Jason R. Flanders  
Aqua Terra Aeris (ATA) Law Group  
490 43rd Street, Suite 108  
Oakland, CA 94609  
(916) 202-3018  
jrf@atalawgroup.com

**VI. Conclusion**

LA Waterkeeper believes this Notice of Violations and Intent to File Suit sufficiently states grounds for filing suit. We intend to file a citizen suit under Section 505(a) of the CWA against Bodycote and its agents for the above-referenced violations upon the expiration of the 60-day notice period. If you wish to pursue remedies in the absence of litigation, we suggest that you initiate those discussions within the next twenty (20) days so that they may be completed before the end of the 60-day notice period. We do not intend to delay the filing of a complaint in federal court if discussions are continuing when that period ends.

Sincerely,

A handwritten signature in blue ink, appearing to read "Jason Flanders", written over a horizontal line.

Jason R. Flanders  
ATA Law Group  
Counsel for Los Angeles Waterkeeper



**SERVICE LIST**

***VIA CERTIFIED MAIL RETURN RECEIPT REQUESTED***

Andrew Wheeler  
Acting Administrator  
U.S. Environmental Protection Agency  
1200 Pennsylvania Ave., N.W.  
Washington, D.C. 20460

Alexis Strauss, Acting Regional  
Administrator  
U.S. Environmental Protection Agency  
Region IX  
75 Hawthorne Street  
San Francisco, CA 94105

Eileen Sobeck, Executive Director  
State Water Resources Control Board  
P.O. Box 100  
Sacramento, CA 95812

Deborah Smith, Executive Officer  
Los Angeles Regional Water Quality  
Control Board  
320 W 4th St #200  
Los Angeles, CA 90013

Jeff Sessions  
U.S. Attorney General  
U.S. Department of Justice  
950 Pennsylvania Avenue, N.W.  
Washington, D.C. 20530-0001

**EXHIBIT A**

Rain Data: WHITTIER 2.9 WNW, CA US1CALA0010

8-30-2013 - 8-27-2018

Days with Precipitation over .1

Date	Precipitation (Inches)
11/21/2013	0.13
11/30/2013	0.33
12/7/2013	0.19
12/20/2013	0.18
2/3/2014	0.2
2/8/2014	0.21
2/27/2014	0.76
2/28/2014	1.2
3/1/2014	0.63
3/2/2014	0.82
4/2/2014	0.15
4/3/2014	0.15
4/26/2014	0.25
9/8/2014	0.1
11/1/2014	0.46
12/1/2014	0.91
12/3/2014	1.05
12/4/2014	0.76
12/13/2014	1.63
12/17/2014	0.38
1/11/2015	0.61
1/27/2015	0.19
2/23/2015	0.48
3/2/2015	0.37
4/8/2015	0.2
5/8/2015	0.69
5/9/2015	0.1
5/15/2015	0.57
5/16/2015	0.1
7/23/2015	0.43
9/15/2015	1.1
10/4/2015	0.18
10/5/2015	0.16
10/15/2015	0.1
12/14/2015	0.16
12/20/2015	0.49
12/22/2015	0.26
1/5/2016	1.22
1/7/2016	1.4
2/1/2016	0.43
2/18/2016	0.9
3/6/2016	0.73
3/8/2016	0.35
3/12/2016	0.34

<b>Date</b>	<b>Precipitation (Inches)</b>
4/9/2016	0.11
5/6/2016	0.28
5/7/2016	0.29
10/17/2016	0.3
10/24/2016	0.12
11/21/2016	1.03
11/27/2016	0.25
11/28/2016	0.15
12/16/2016	2
12/22/2016	1.05
12/24/2016	1.15
12/30/2016	0.25
12/31/2016	0.25
1/1/2017	0.17
1/5/2017	0.61
1/9/2017	0.68
1/11/2017	0.59
1/12/2017	1
1/13/2017	0.84
1/19/2017	0.94
1/20/2017	1.56
1/22/2017	0.76
1/23/2017	1.83
1/24/2017	0.17
2/6/2017	0.2
2/7/2017	0.8
2/8/2017	0.15
2/11/2017	0.39
2/18/2017	2.7
3/22/2017	0.25
5/7/2017	0.3
5/8/2017	0.27
1/10/2018	2.06
2/27/2018	0.31
3/3/2018	0.56
3/11/2018	0.59
3/14/2018	0.2
3/15/2018	0.14
3/17/2018	0.23
3/22/2018	0.22
3/23/2018	0.4